IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

F.A.O.No.85 of 2007

A.S.135/2006 OF THE COURT OF THE ADDITIONAL DISTRICT JUDGE, N.PARAVUR.

O.S.512/1998 OF THE COURT OF THE MUNSIFF, N.PARAVUR.

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APPELLANTS/APPELLANTS/PALINTIFFS:-

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1. ANDREWS, S/O.XAVIER,
   AMBATT,CHENNOORU DESOM,
   KADAMAKKUDY VILLAGE.

2. SHANTY, W/O.ANDREWS,
   RESIDING -DO-. REP. BY POWER OF ATTORNEY HOLDER
   JOY, S/O.JOSEPH DICRROSE,CHALIL POYAKAYIL,
   THRISSUR VILLAGE, THRISSUR KARA.

BY ADV. SRI.T.A.RAMADASAN

RESPONDENT/RESPONDENT/DEFENDANT:-

AMBALATHUNGAL FAMILY TRUST
REP. BY PRESIDENT, A.V.JOHN,AMBALATHUNGAL HOUSE,
THUNDATHUMKADAVU,VARAOOUZHA.

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:-

K.Padmanabhan Nair,J.

F.A.O.No.85 of 2007

Dated, this the 12th day of March, 2007

JUDGMENT

The plaintiffs in a suit for declaration and fixation of boundary are the appellants in this First Appeal from Order. The appellants filed a suit for fixation of boundary and for a decree of injunction, prohibitory and mandatory. The trial Court after taking evidence, dismissed the suit. The appellants filed A.S.No.135 of 2006. The appellate Court set aside the judgment and decree and remanded the matter to the trial Court for a fresh disposal as expeditiously as possible, at any rate, within three months, but at the same time directed the trial Court to permit the respondent-defendant to proceed with the construction of the building in their property on executing an undertaking by the defendant undertaking to demolish the portion of construction, if any, found to be constructed encroaching any portion of plaint schedule property. Challenging that

part of the remand order and also complaining inadequacy of the time frame fixed for disposal of the suit, this appeal is filed.

2. The lower appellate Court remanded the matter to the trial Court for a specific purpose of getting the plaint schedule properties identified in accordance with the descriptions contained in Exhibits B1 and B1(a). I am told that a Commissioner was appointed and measurements will have to be made with the help of a competent surveyor, for which three months time is hardly sufficient. The appellate Court ought to have given at least nine months time to dispose of the suit.

3. The defendant-respondent shall file an affidavit stating that he will not claim any equity or make a claim that the loss of property, if any, to the plaintiffs may be compensated by way of compensation or damages. He must unequivocally undertake to demolish that portion. While allowing the defendant to proceed with the construction, the trial Court shall also make it very specifically clear that the

defendant will not be entitled to get any equity and he shall demolish that portion of construction, if any, made encroaching the plaint schedule property and in case there is any failure, the same shall be demolished through Court. Only on making such an undertaking and that he is prepared to take such a risk, he shall be allowed to proceed with the construction.

In the result, the appeal is disposed of as indicated above. I.A.No.914 of 2007 shall stand dismissed.

K.Padmanabhan Nair
Judge

vku/-